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**BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION**

INQUIRY CONCERNING A JUDGE, NO. 01-244  
(Judge Charles W. Cope)

Case No. SC01-2670

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**SPECIAL COUNSEL'S REPLY TO RESPONDENT'S RESPONSE**

**TO SPECIAL COUNSEL'S EMERGENCY MOTION FOR PROTECTIVE ORDER**

The issues raised in Special Counsel's Emergency Motion for Protective Order have largely become moot because the depositions of Nina and Lisa Jeanes set for January 22 and 23, 2002, have been cancelled. Respondents' counsel has assured the Panel that Respondent will appear for a deposition within the next two weeks. The Special Counsel has tentatively reset the depositions of Nina and Lisa Jeanes for February 13, 2002. Should Respondent fail to appear for a deposition as promised by his counsel, the State of California and/or Nina and Lisa Jeanes are free to attempt to intervene to protect their interests.

A reply to Respondents' Response to Special Counsel's Emergency Motion for Protective Order (the "Response") is nonetheless required. The undersigned received the Response shortly after 4:38 p.m. on Martin Luther Kind, Jr., Day, Monday, January 21, 2002, only because he happened to be in the office on this state holiday. Because the hearing on this motion is set for 9:00 a.m. on Tuesday, January 22, 2002, the undersigned has had but a few hours to read and decide whether and how to reply to the pages of inflammatory accusations in the Response.

While an in-kind counterattack on Mr. Merkle's character is tempting, it would clearly not advance these proceedings or serve any useful purpose. However, some reply to the accusations must be made because Judge Cope and his counsel have elected to level serious charges of ethical misconduct against the undersigned personally and in the public record, because these charges question the very integrity of

these proceedings, and because those charges may be calculated to fabricate due process challenges to the final recommendation by the Panel in this case. In the event the Panel determine that the allegations in the Response are worth entertaining, the undersigned has attached a factual affidavit as **Exhibit A** hereto.

The undersigned respectfully submits, however, that the only likely impact that attempting to resolve these allegations may have on this case is to create a circus sideshow to shift the focus from Judge Cope to the attorneys and thereby to distract the Panel and the public from the only two issues that are relevant – whether Judge Cope committed the acts alleged and whether those acts violate the Code of Judicial Conduct.

### **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. mail to: **Louis Kwall, Esq.**, Kwall, Showers & Coleman, P.A., 133 N. St. Harrison Ave., Clearwater, Florida 33755; **Robert W. Merkle, Jr., Esq.**, Co-Counsel for Respondent, 5510 W. La Salle Street, #300, Tampa, Florida 33607-1713; **Judge James R. Jorgenson**, Chair of the Judicial Qualifications Commission Hearing Panel, 3rd District Court of Appeal, 2001 S.W. 117th Ave., Miami, Florida 33175-1716; **John Beranek, Esq.**, Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32301; **Brooke S. Kennerly**, Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; **Thomas C. MacDonald, Jr., Esq.**, General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602 this 21st day of January, 2002.

By:  
John S. Mills, Esq.  
Florida Bar No. 0107719  
Special Counsel  
Florida Judicial Qualifications Commission  
Foley & Lardner  
200 Laura Street  
Jacksonville, Florida 32201-0240  
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**AFFIDAVIT OF JOHN S. MILLS**

STATE OF FLORIDA  
COUNTY OF DUVAL

BEFORE ME, the undersigned authority, personally appeared John S. Mills, who being first duly sworn, deposes and says:

A. I am the duly appointed Special Counsel in the above-captioned proceedings. I am a private attorney in Jacksonville, Florida, practicing appellate and commercial litigation with the law firm of Foley & Lardner. I have been requested by the Commission to serve as Special Counsel at an hourly rate that is less than half of my normal billing rate. I have never met Judge Cope and have no desire to harm him or his reputation other than as might directly flow from the good faith prosecution of the charges against him. In short, I have accepted appointment as Special Counsel as a service to the bench, the bar, and the public, and I take my charge to prosecute this case fairly and professionally very seriously.

B. I have reviewed the Response to Special Counsel's Emergency Motion for Protective Order filed in the above-captioned proceedings, and feel compelled to respond to the false and/or misleading allegations therein by number:

1. See individual responses below.

(a) I did have an agreement with Mr. Merkle that Judge Cope would appear for a deposition and testify without invoking his Fifth Amendment rights and subsequently Nina and Lisa Jeanes would appear for a deposition by Mr. Merkle.

(b) I had and have no agreements with the California prosecutor, other than to attempt to keep these proceedings from interfering with the pending criminal proceedings.

(c) I did not conceal any agreements. While I do not recall promising Mr. Merkle that I would not disclose the contents of Judge Cope's deposition to the California prosecutor, I advised the California prosecutor that I would not provide this transcript without giving Judge Cope the opportunity to file a motion for protective order and obtain a ruling. At no time has the prosecutor asked me to nor have I ever offered to provide her with a copy of the transcript.

(d) The State of California does have a legitimate interest in working with me to minimize the intrusion of either proceeding into the other. This is a matter of professional courtesy and ensuring the orderly administration of justice.

(e) I have no agreements and no interest in facilitating Judge Cope's conviction in California. To the best of my knowledge, the State of California has competent and professional counsel, and Judge Cope will be convicted or not based on the evidence. The only reason Judge Cope should resign from the bench is because his conduct has compromised the public's confidence in the judiciary and suggests that he is not fit to sit as a judge.

(f) I am without knowledge as to the propriety of service on Nina and Lisa Jeanes.

2. No response.

3. Neither the instant proceedings nor any conduct undertaken by me has been designed to facilitate the prosecution of Judge Cope in California. To the best of my information and belief, Nina and Lisa Jeanes had every intention of appearing for their deposition had Mr. Merkle lived up to his agreement.

4. The motion speaks for itself. It does not admit any collusion because there has been no collusion.

5. No response.

6. I have no interest in the California proceeding other than to endeavor to ensure that Mr. Merkle does not succeed in using these proceedings to interfere with the California proceedings. My motion was filed only in a good faith attempt to prevent prejudice to the people who relied on Mr. Merkle's agreement with me.

7. I not only have not rejected, but have accepted and do accept Judge Cope's agreement to testify within the next two weeks. My motion appears to be moot because the January 22 and 23 depositions have been postponed.

8. To my knowledge and belief, Maryland counsel only intended to challenge the deposition in Maryland once Mr. Merkle reneged on his agreement. Nina and Lisa Jeanes only obtained counsel after I warned them of the promises by Mr. Merkle and Mr. Kwall that Mr. Merkle would in essence terrorize them during their depositions and ask them personal questions involving their personal background such as vague, irrelevant (and, insofar as I know false) allegations of alcoholism by Nina Jeanes, as well as sensitive and intimate facts about Lisa Jeanes relating to whether and when she had an abortion and the appearance of her genitalia. Mr. Kwall

warned me that I would want to file a bar grievance against Mr. Merkle after the depositions. Because of these threats of what I considered to be improper intimidation tactics, I recommended that Nina and Lisa Jeanes consider retaining their own counsel to defend their depositions. I explained to them that not only do I not represent them, but if I were to ever suspect that they were being untruthful, I would become adverse to them. I did assure them, however, that I have little doubt that they are telling the truth.

9. No response.

10. Mr. Merkle suggested that I view the videotape of Judge Cope's interrogation by the police in California because that would demonstrate Judge Cope's innocence. After Mr. Merkle failed to live up to his promise to deliver the tape, I asked the California authorities to produce the tape and any materials relevant to these proceedings. The authorities in California confirmed that there was nothing improper about providing relevant information (all of which they had previously disclosed to Judge Cope) requested by the Commission. Mr. Merkle did not complaint until I indicated that found the videotape to be highly incriminating of Judge Cope.

11. No response.

12. No response.

13. No response.

14. No response.

15. No response.

16. I did not tell Mr. Merkle what the Investigative Panel did or did not consider, as I played no role in their proceedings other than to draft the notice of formal charges. I suspect that

the Investigative Panel likely considered more than the items listed by Mr. Merkle, probably including the response to the Notice of Investigation. I point out that Article V, section 12(a)(4) mandates that proceedings before the Investigative Panel are confidential.

17. No response.

18. No response.

19. No response.

20. I enclosed with my December 13, 2001, letter all written statements or transcripts of testimony by any person in my possession. I had not in fact determined who I intended to call as a witness.

21. I wanted to reserve my decision of whether to call the victims as witnesses until after I had personally interviewed them. I believe that I have an ethical and professional obligation not to put forth any evidence or testimony that I do not personally find credible.

22. My objection was intended to respond to paragraph 2 of the Judge Cope's request, which sought production of a "list of all documents in the possession of the special counsel not provided with this demand." This request does not track the language of Rule 12(b). My letter clarified that notwithstanding my objection, I would certainly respond to any proper request for specific, non-privileged discoverable documents related to this case.

23. I did not agree to the date, time, or place of the depositions. Mr. Merkle indicated that he wanted to set their depositions as soon as possible. I told him that I would agree to that as long as their depositions were set after Judge Cope's deposition and as long as Judge Cope was going to testify. Mr. Merkle agreed and proposed to set their deposition for the week following



Judge Cope's deposition. I told Mr. Merkle that I intended to contact both Nina and Lisa Jeanes shortly to determine whether I would call them as witnesses and whether they would voluntarily appear for deposition that week.

24. The statements in my letter were true. I did not even know Lisa Jeanes had left California until after getting off of the telephone with Mr. Merkle on December 21, 2001. I first called Lisa Poll, the deputy district attorney prosecuting Judge Cope in California, to be sure she had no objection to my contacting her witnesses and to get a feel for whether the victims would be willing to put up with even more hassles caused by Judge Cope's misconduct. I then discovered that Lisa Jeanes lives in Maryland. I spoke to both Dr. Nina Jeanes and Dr. Lisa Jeanes for the first time that evening. I found them both to be extremely credible with no motive to lie.

I also admired their courage for cooperating in these proceedings and the criminal proceedings, even though they know that Judge Cope's counsel will try every trick in the book to harass and embarrass them and that they will have to take valuable time away from their personal lives and active medical practices. Therefore, I determined that I would call them as witnesses.

I drafted my letter to Mr. Merkle the next morning, Saturday, December 22. I confirmed my agreement with Mr. Merkle in writing because I believe it is prudent practice to confirm everything in writing, especially when you have concerns about opposing counsel's honesty. Mr. Merkle never objected to this confirmation until January 17, 2001, when I asked him to agree to postpone the depositions of Nina and Lisa Jeanes upon learning of Judge Cope's hospitalization. Indeed, we confirmed the agreement in more than one conversation following the letter. As late as January 16 (the day before Judge Cope was admitted to the hospital), Mr. Merkle told me I

could "put it in the bank" that Judge Cope would appear and testify. (Mr. Merkle subsequently admitted to me that he knew that Judge Cope was suffering from health problems that might require him to check into the hospital, but he elected not to give me advance warning of this.)

25. I do not believe that Mr. Merkle is correctly quoting me, but I do not have a transcript of the telephone conversation. I recall telling Mr. Merkle that I was as concerned about the fairness to the victims as I was about fairness to Judge Cope. I explained to Mr. Merkle during that conversation and others, that my only job is to prove the allegations in the Notice of Formal Proceedings. Each time, I have clarified that if I ever had reason to doubt any of the allegations, I would not attempt to prove them and would seek dismissal of any unsupported charge. I know that just because there is probable cause to believe that a judge engaged in misconduct (which is the standard for filing charges) does not always mean that the special counsel will find clear and convincing evidence to prove that the judge did so (which is the standard for proving the charges).

26. No response.

27. I do not recall being asked not to or explicitly agreeing not to share a transcript of the deposition with Ms. Poll, although I did understand Mr. Merkle's concerns. I told him that I would ask for a rough copy of the deposition transcript to help me prepare for the depositions of Nina and Lisa Jeanes. I did agree not to order a formal transcript or to file a transcript with the Panel without giving him sufficient advance warning to allow him to seek a motion for protective order. I am reasonably confident that I did not state that I would not file the transcript until ten days before the hearing.

I specifically told Mr. Merkle that I understood that any member of the public could order

the transcript directly from the court reporter. At any rate, I never offered to and Ms. Poll never asked me to provide her with a copy of the transcript. After my conversation with Mr. Merkle on January 16, I specifically told her that I would not send her a copy of the transcript without giving Mr. Merkle the opportunity to seek a protective order.

28. Again, I have never had an agreement to provide anyone with a copy of Judge Cope's deposition transcript. I am aware of no intent by anyone to prevent Nina and Lisa Jeanes from having their depositions taken before the criminal trial, so long as Judge Cope is also deposed to level the playing field. The only reason that it may be important to the California proceedings that Judge Cope give his deposition first is because it would be foolhardy to trust Mr. Merkle when he promises to produce Judge Cope before the trial. As evidenced by his prior communications to me and his false statements in the Response, I candidly do not believe that Mr. Merkle is to be trusted. If Nina and Lisa Jeanes are deposed first, then Judge Cope could always assert his rights under the Fifth Amendment, as he would be entitled to do. That would result in the defense have a serious advantage over the prosecution in the California proceedings because California law does not allow depositions in these circumstances.

29. No response.

30. No response.

31. I was aware that Nina and Lisa Jeanes had retained counsel to represent them in their depositions to protect them from Mr. Merkle's threatened tactics. I was also aware that counsel did not believe that service had been properly made on either woman. I convinced them both to voluntarily produce their clients in reliance on my agreement with Mr. Merkle. To the best

of my knowledge and belief, had Judge Cope appeared for his deposition, Nina and Lisa Jeanes would have also appeared for theirs, regardless of Mr. Merkle's apparent failed attempt to perfect service.

32. Again, the timing of the depositions is only an issue because there are no guarantees that Judge Cope will appear and waive his Fifth Amendment rights at a deposition prior to the criminal trial.

33. There is legitimate concern that Judge Cope will not appear or will not testify at a deposition prior to February 25. In addition to concerns Mr. Merkle is untrustworthy or that Judge Cope may simply change his mind and exercise his Fifth Amendment rights, Judge Cope apparently has significant health issues that could again delay these proceedings. For example, Mr. Merkle represented to me that Judge Cope's health problem necessitating his hospitalization may have been stress related. I have learned that Judge Susan Schaeffer advised Judge Cope at approximately 9:30 a.m. on January 17 that I had interviewed her and had discovered some inconsistencies between the version of events he had related to her and the version Mr. Merkle was relating to me. Less than three hours later, at 12:12 p.m., Mr. Merkle left a message on my voice mail that Judge Cope had checked himself into the hospital.

34. There was no such agreement or collusion and a simple reading of the motion contradicts Mr. Merkle's assertions.

35. Again, I do not recall expressly agreeing not to provide the transcript to Ms. Poll, but Ms. Poll never asked me to and I never offered to provide her with a copy. After my conversation with Mr. Merkle, I affirmatively advised Ms. Poll that I would not provide her with

a copy without giving Judge Cope the chance to seek a protective order.

36. I do not believe that I made any agreement as to when I would file the transcript other than to promise to give Mr. Merkle fair warning to allow Judge Cope to seek a protective order. At no point did I agree with Mr. Merkle that a deposition transcript does not become a public record until filed with the Court. I believe that under Article V, section 12(a)(4) of the Florida Constitution, the deposition is a matter of public record, and any member of the public can simply order their own copy directly from the court reporter. If Mr. Merkle has any law to suggest to the contrary, he has yet to share it with me.

37. Again, I understood that Nina and Lisa Jeanes would have appeared voluntarily at their scheduled deposition, had Judge Cope appeared for his.

38. While I am certainly far from perfect, every decision I make and every action I take as an attorney, whether it be as special counsel in this case or otherwise, is based on what I believe is ethical, professional, and appropriate under the circumstances. In nearly every conversation and dealing I have had with Mr. Merkle, he has been rude, abusive, and unprofessional, and has made the same kind of unsupported, inflammatory insults he has now placed in the public record. He has told me that I just said something that I did not, as if there were someone in the room to whom he was trying to convey a false impression. Accordingly, I have informed him that I would no longer speak to him over the telephone and that I would only communicate by letter or through his co-counsel Mr. Kwall, who has thus far acted with dignity and professionalism (other than tolerating his co-counsel's antics).

39. No response.

40. No response.

41. No response.

42. No response.

43. No response.

44. No response.

45. No response.

46. I have not advised that no negotiations will occur prior to the trial in California. To the contrary, I have repeatedly offered to talk about settlement possibilities before or after the depositions. While I offered Messrs. Merkle and Kwall my personal opinions in what I considered to be confidential communications, I have at all times made clear to them that I am not the one to decide whether and how to settle a case. I am only the Special Counsel, I do not decide how to settle the Commission's cases. I have repeatedly asked Messrs. Merkle and Kwall to propose a resolution, and I have told them that I would promptly convey any offers to the Investigative Panel. Absent a settlement acceptable to the Commission, I do have every intention of proving that Judge Cope committed the scandalous acts pleaded in the Notice of Formal Proceedings.

**\*\*\* Remainder of page intentionally left blank. \*\*\***

Further your Affiant sayeth not.

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John S. Mills

Sworn to and subscribed before me, this \_\_\_\_\_ day of January, 2002, by John S. Mills.

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Signature of Notary

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(Print, Type or Stamp, Commissioned name of Notary Public)

Personally Known \_\_\_\_\_ OR Produced Identification \_\_\_\_\_

Type of Identification Produced \_\_\_\_\_